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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/592,926

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Sophie Deroo

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01/05/2010

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EXAMINER

SASTRI, SATYA B

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

01/05/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/592,926	Applicant(s) DEROO ET AL.	
	Examiner SATYA B. SASTRI	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to amendment filed on 10/13/09. Claims 14-29 are now pending in the application.
2. Applicant's submission of the certified copy of the foreign priority document is acknowledged.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morvan et al. (WO03002242A1, cited as X reference in the International Search report).

At the outset, it is noted that the WIPO publication is used for date purposes while US2004/0170657A1 is used as the equivalent in the rejection set forth below.

Morvan et al. disclose a dispersion of at least one emulsion of an organic phase in an aqueous phase, the aqueous phase having a soluble salt content of at least 0.5 mol/l and comprising a block copolymer comprising at least one hydrophobic block and at least one hydrophilic block (Claim 1). The dispersion comprises the block copolymer in an amount of at

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least 1% by wt. relative to the organic phase, and advantageously from 2 to 20 wt.% relative to the organic phase (Claim 16). The organic phase may be based on mineral oils, waxes, fats of vegetable or animal origin etc. (Claim 22) and may be present in an amount of 5 to 50% by wt. of the dispersion (Claim 24). Additionally, the prior art discloses drying of the dispersion to isolate the product for use in plant protection formulations (Claims 35, 36).

The prior art fails to disclose a dried emulsion having wt. ratio a hydrophobic phase to the matrix greater than 50/50.

It is noted that the prior art discloses a process as presently recited in claim 23 to prepare the dried emulsion. Additionally, it is noted that the copolymer wt. relative to the organic phase ranges from 2 to 20% by wt. while the organic phase may range from 5 to 50% by wt. of the dispersion. Thus, the disclosed wt. ratio of the organic (hydrophobic) phase to the block copolymer in the dried emulsion overlaps in scope with the presently recited range of greater than 50/50. In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). See MPEP § 2144.05. In view of the generic teaching in the prior art and in view of the case law, it would have been obvious to one of ordinary skill in the art to utilize any wt. ratio of the organic phase to the copolymer disclosed in the prior art, including those that fall within the scope of the present invention, absent evidence of unexpected results for the presently claimed range. Wt. ratios within the overlapping range must necessarily result in a matrix having dispersed therein, the hydrophobic phase as presently claimed.

With regard to claim 15, the prior art discloses dispersions that contain surfactant (Claims 26, 27) prior art the drying step.

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With regard to claims 18, 19, the working examples in the prior art discloses addition of the organic phase an emulsion (examples 3 and 4).

With regard to claim 20, the prior art discloses a mass ratio of the hydrophilic block to the hydrophobic block as ranging between 40/60 to 95/5 (Claims, 1, 2).

With regard to claims 21 22, the disclosed working examples in the prior art include diblock copolymers derived from ethylenically unsaturated monomers.

With regard to claim 24, the prior art discloses drying by thin layer formation, spraying or lyophilization (Claim 35).

With regard to claims 17, 25, 29 the working examples disclose the wt. ratio aqueous phase and the organic phase prior art as overlapping in scope with the presently cited range. Additionally, the prior art discloses a water soluble salt content of at least 0.5 mol/L. in the aqueous phase (0104). The lower limit of this range is close to the upper limit of the presently claimed range. Although the disclosed range does not overlap the presently claimed range, it is the examiner's position that the values are close enough that one of ordinary skill in the art would have expected the same properties. Case law holds that a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). As such, the prior art discloses salt content of at least 0.5 mol/L in the aqueous phase that would result in the matrix component upon drying. However, differences in concentration or temperature will not support patentability of the subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. MPEP 2144.05.

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With regard to claim 26, the dried emulsions are usable in plant protection formulations (0181).

Response to Arguments

5. In view of the amendment, all previous rejections are withdrawn. Applicant's arguments have been fully considered but are moot in view of new grounds of rejection. Additionally, the new grounds of rejection are necessitated by the amendment and therefore, it is proper to the action final.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satya Sastri at (571) 272 1112. The examiner can be reached on Mondays, Thursdays and Fridays, 7AM-5.30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Wu can be reached on 571-272-1114.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Satya B Sastri/

Examiner, Art Unit 1796